

REMARKS

Claims 1-12 are pending. Claim 1 is generic.

I. The Election Requirement and Applicant's Provisional Election

The Examiner required election and considers the application to be directed to more than one species of the generic invention which are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The Examiner has designated the species of inhibitory substances by the letters a)-g).

In response, Applicants hereby elect, with traverse, c) phenylglycine, drawn to claims 1-5 and 10-12.

Applicants note that upon allowance of the generic claims, any claims to non-elected species should no longer be considered withdrawn. C.f. MPEP § 809.

II. Inhibitory Substances a)-g) Exhibit Corresponding Special Technical Features

Applicants traverse the election requirement because the unity of invention standard must be applied in national stage applications. Section 1850 of the Manual of Patent Examining Procedure (revised 8th edition, published August, 2006) (hereinafter "MPEP") provides that

when the Office considers international applications . . . during the national stage as a Designated or Elected Office under 35 U.S.C. 371, PCT Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories without regard to the practice in national applications filed under 35 U.S.C. 111

. . .

In applying PCT Rule 13.2 to . . . national stage applications under 35 U.S.C. 371, examiners should consider for unity of invention all the claims to different categories of invention in the application and permit retention in the same application for searching and/or preliminary examination, claims to the categories which meet the requirements of PCT Rule 13.2

MPEP at page 1800-94.

MPEP section 1893.03(d) reiterates the Examiner's obligation to apply the Unity of Invention standard PCT Rule 13.2 instead of U.S. restriction/election of species practice:

Examiners are reminded that unity of invention (not restriction) practice is applicable . . . in national stage applications submitted under 35 U.S.C. 371.

Id. at page 1800-199, col. 2.

The present invention is directed to cell growth inhibitors. All of the inhibitory substances identified by the Office are cell growth inhibitors. This is a "special technical feature" shared by all of the inventions in this application. All of the claims should, therefore, be examined together in one application.

Thus, in the present case, unity of invention does exist between all claims. Therefore, Applicant respectfully requests that the Examiner withdraw the Election Requirement of species a)-g), and examine all of the claims in a single application.

III. The Search Of An Additional Species Is Not Unduly Burdensome

Applicants additionally traverse the election requirement on the grounds that the search and examination of additional species a)-b), and d)-g) is not unduly burdensome. According to MPEP section 803 "if a search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent and distinct inventions." As all of the species are cell growth inhibitors, Applicants suggest examination of species a)-g) can be made without serious burden. In particular, as Applicants have elected phenylglycine, it is respectfully requested that species a)-b) and d)-g) be searched along with phenylglycine and claims 1-12 be examined at this time.

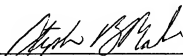
IV. Conclusion

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

If there are any fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 19-0741. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should be charged to our Deposit Account.

Respectfully submitted,

Date Aug. 20, 2007

By 

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